GEOTHERMAL RESOURCES INTERNATIONAL, INC.

IBLA 74-197 Decided September 18, 1974

Appeal from a decision of the Chief, Branch of Leasing, BLM, refusing to add a certain parcel to a conversion right application submitted under the Geothermal Steam Act.

Affirmed.

1. Equitable Adjudication: Generally- Geothermal Leases: Applications: Generally--Geothermal Leases: Conversion Leases

   Failure to exercise timely the conversion right granted under the Geothermal Steam Act of 1970 to lessees, permittees and mineral claimants for lands embraced within the limits of their lease, permit or claim, is not within the ambit or the equitable adjudication authority.

2. Geothermal Leases: Applications: Generally--Geothermal Leases: Conversion Leases

   An application under the Geothermal Steam Act of 1970 for a conversion lease filed subsequent to June 22, 1971, is properly rejected.

APPEARANCES: Domenic J. Falcone, Vice President, Geothermal Resources International, Inc., for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Geothermal Resources International, Inc., has appealed from a decision of the Chief, Branch of Leasing,

Bureau of Land Management, dated January 9, 1974, refusing to add a 40-acre parcel to its conversion-right application, R 4394. For reasons elaborated infra, we affirm.

By instrument dated June 15, 1971, the appellant, through its president, made application to convert certain placer mining claims into Federal geothermal leases pursuant to Section 4 of the Geothermal Steam Act of 1970 [the Act], 84 Stat. 1566, 30 U.S.C. § 1003 (Supp. 1974). Section 4 of the Act authorizes the conversion of existing mining claims located on or prior to September 7, 1965, into geothermal leases covering the same lands "at any time within one hundred and eighty days following December 24, 1970," provided that the mineral claimant showed to the satisfaction of the Secretary of the Interior that "substantial expenditures for the exploration, development or production of geothermal steam have been made by the applicant * * * on the lands for which a lease is sought or on adjoining, adjacent, or nearby Federal or non-Federal lands." The application was processed in Washington and by decision dated January 14, 1974, the Assistant Secretary of the Interior approved the conversion except as to certain privately-owned lands on which there had been no mineral reservation to the United States.

By letter of January 4, 1974, addressed to the Geothermal Coordinator, appellant noted that it had inadvertently failed to file for conversion rights for one 40-acre tract consisting of the SW 1/4 NW 1/4 sec. 20, T. 3 S., R. 29 E., M.D.M., California. Appellant requested inclusion of this tract in the application already submitted. By decision of January 9, 1974, the Chief, Branch of Leasing, rejected appellant's request, from which decision this appeal has been taken.

The decision of the Chief, Branch of Leasing, was clearly correct. The Act expressly limits the time period in which a conversion application may be made to 180 days commencing on December 24, 1970. The applicable regulation, 43 CFR 3230.3-1, is also explicit: "A person seeking to convert a lease, permit, or application therefor, or a mining claim to a geothermal lease or application must have filed a written application on or before June 22, 1971." (Emphasis added.) In the instant case no mention of, or much less an application for, this 40-acre parcel was made until the letter of January 4, 1974, more than 18 months after the cut-off date. The requirements of the Act were not met.

[1] Appellant seeks to have this Board apply equitable adjudication under 43 CFR 1871.1-1. That regulation, however, is limited in its ambit to "entries," and allows equitable adjudication only when there has been substantial compliance with the law. The conversion right established by Section 4 of the Act is not an "entry." The conversion right may be premised on leases and permits which are clearly not "entries," as well as on mining locations. And, as appellant's brief notes, failure to obtain a preference right lease does not work an invalidation of a subsisting mining location. The regulation, therefore, is not applicable. This situation is clearly not within the ambit of the equitable adjudication authority. Cf. United States v. Johnson, A-30853 (March 17, 1968).

[2] the sine qua non of the conversion right, i.e., application therefor within a Congressionally-mandated time period, has not occurred. Appellant as regards the 40-acre tract in question has not substantially complied with the requirements of the Act. Thus, the decision of the Chief, Branch of Leasing, was manifestly sound.

Appellant has raised questions about the practical consequences of denying him a conversion right while he retains his mining claim. Inasmuch as such issues are not properly before us we decline to express any opinion thereon.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge